

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Kamlesh

Vs. Bhajan Lal

S.B.CR.MISC. PETITION NO.857/2005

DATE OF ORDER :: October 12, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.Kailash Khatri, for the petitioner.
Mr. H.S.Sanchu, for non-petitioner

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 7.1.2005 passed by the Judicial Magistrate, Pilibanga (for short 'the trial court' hereinafter), whereby the trial court while allowing the application under section 125 Cr.P.C. filed by the petitioner seeking monthly allowance of maintenance, granted the maintenance at the rate of Rs.500/- in favour of the petitioner w.e.f. 1.1.2005.

I have heard learned counsel for the petitioner and the counsel appearing for the non-petitioner. Perused the order

impugned as also the record of the trial court.

From the perusal of the record, it appears that the petitioner filed an application under section 125 Cr.P.C. on 28.5.2003 before the trial court. The trial court issued notice to the non-petitioner, which were served on 28.7.2003. Time was sought to file the written statement. The matter was adjourned on various dates. This shows that there was no delay on the part of the petitioner, whereas most of the time was consumed by the non-petitioner.

It is contended by the learned counsel for the petitioner that the trial court fell in error in granting maintenance w.e.f. 1.1.2005 instead of 28.5.2003 i.e. the date of application.

Keeping in view the decision of Division Bench of this Court in *Smt. Savita Sharma vs. Shri Krishan Murari*, **1990 (1) RLR 400**, wherein this Court held that the maintenance should be from the date of application. Even otherwise on merit, the petitioner is entitled for maintenance from the date of application and not from the date awarded by the trial court.

In the result, the order impugned is modified to the extent that the petitioner is entitled for the maintenance at the rate of

Rs.500/- w.e.f. 28.5.2003 i.e. from the date of application instead from 1.1.2005. With this modification, the petition is disposed of.

(H.R.PANWAR),J.

m.asif/-